



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No. HOha15010042
HUD No. [REDACTED]

JAMAL SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION
Complainant,

v.

THE WOODS OF EAGLE CREEK,
Respondent,

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On January, 16, 2015, [REDACTED] ("Complainant") filed a Complaint with the Commission against The Wood Of Eagle Creek ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*) the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

There are several issues pending before the Commission. The first issue before the Commission is whether Respondent treated Complainant less favorably because of her disability. In order to prevail on such a claim, Complainant must show that: 1) she is a member of a protected class; 2) she was qualified, ready, willing and able to continue her tenancy with Respondent in a manner consistent with its reasonable terms and conditions; 3) she was evicted; and 4) she was treated less favorably than similarly-situated tenants without disabilities under similar circumstances. It is evident that Complainant is a member of a protected class by virtue of her disability; however, evidence shows that she was unable to continue her tenancy in accordance with Respondent's reasonable terms and conditions. Moreover, no evidence has been provided or uncovered to show that similarly-situated tenants without disabilities were treated more favorably under similar circumstances.



By way of background, Complainant began her tenancy with Respondent on or about October 5, 2007. At all times relevant to the Complaint, Complainant's lease required residents to take reasonable measures to prevent and cure pest infestations including but not limited to those caused by bed bugs. While Complainant was aware of these provisions, she was unwilling to continue her tenancy in accordance with Respondent's reasonable terms and conditions. Specifically, in August 2013, Complainant requested that her apartment be inspected for bedbugs. Shortly thereafter, on or about August 22, 2013, Respondent sent a letter to Complainant confirming that bedbugs were discovered in her unit and notifying Complainant of treatment dates. While the letter specified steps necessary to prepare for the treatments, Complainant failed to prepare her apartment on several occasions. Complainant eventually complied with the preparation request and Respondent successfully exterminated the bedbugs in October 2013. Nonetheless, in June 2014, Respondent learned that Complainant's unit had become infested with bedbugs a second time and tried to schedule treatments on or about June 19, 2014 and July 3, 2014. Ultimately, Respondent sent Complainant a 30-day notice to terminate the lease on or about July 3, 2014 for refusal of bedbug treatment amongst other lease violations.

Despite Complainant's assertions, no evidence has been provided or uncovered to support her claims. Rather, evidence shows that Complainant refused to allow Respondent to perform extermination services, housed an unauthorized breed restricted dog in the apartment, and generally disrupted the peaceful enjoyment of her neighbors in contravention of the lease. Moreover, no evidence has been provided or uncovered to show that similarly-situated tenants without disabilities were treated more favorably under similar circumstances. As such and based upon the aforementioned, there is no reasonable cause to believe that Respondent violated the laws as alleged with respect to the first issue. Complainant may appeal the above no reasonable cause finding regarding the first issue to the full Commission. 910- IAC 1-3-2(g). The written appeal must be filed with the Commission within fifteen (15) days of receipt of this Notice and must include any new and additional evidence relied on by Complainant to support the appeal.

The second issue before the Commission is whether the Respondent unreasonably delayed or denied Complainant's request for a reasonable accommodation. In order to prevail, she must prove that 1) she has a disability as defined under the law; 2) Respondent was or should have been aware of Complainant's disability; 3) she requested a reasonable accommodation; and 4) Respondent unreasonably delayed or denied the requested accommodation. Complainant has a mobility impairment causing pain and Respondent knew or should have been aware of the impairment. Evidence also shows that Complainant requested a reasonable accommodation and that Respondent unreasonably denied the request.

At all times relevant to the Complaint, Complainant's lease required her to take reasonable measures to prevent insect infestations. While Complainant was reluctant to prepare her apartment for bedbug treatments, evidence shows that she has several mobility impairments which caused her to have difficulty preparing her unit. Specifically, Complainant asserts that she requested additional time from Respondent to prepare for the exterminators to come to

her unit. Ironically, while Respondent asserts that Complainant failed to request a reasonable accommodation, Respondent's Assistant Property Manager admitted that Complainant requested an accommodation after being told that she would be evicted if she failed to prepare her apartment for extermination. Despite Respondent's assertions, there is insufficient evidence to support her contention. Rather, evidence shows that Respondent's Assistant Property Manager considered Complainant's request for additional time to prepare for the extermination to be a request for a reasonable accommodation. While Complainant did not use the specific phrase "reasonable accommodation," the use of such language is not required in order to make a request under the law. Moreover, while Respondent asserts that it was unaware of Complainant's disability, the Assistant Property Manager admitted that she believed that Complainant's request was made, albeit after a 30-day notice to terminate was issued. Again, the fact that the request was made after the termination notice was issued is immaterial; rather, Respondent's failure to engage in the interactive dialogue process after the request was made is fatal to its claims. Thus, Respondent's failure to engage in the interactive dialogue process after Complainant's request for a reasonable accommodation constitutes a violation of the Fair Housing laws and probable cause exists to believe that a discriminatory practice occurred as alleged with respect to the second issue.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred with respect to the second issue. As permitted by 910 IAC 2-6-6(h), Respondent, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondent, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, the Respondent shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. [REDACTED] and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If at any time following service of this charge Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

8/14/15
Date



Jamal L. Smith
Executive Director
Indiana Civil Rights Commission

